I feel reasonably satisfied that the balance of convenience is in favour of excluding the counterclaim.

The 5th to 12th defendants can bring their separate action forthwith, and I can see no reason why all the many questions to be determined should not be disposed of speedily without any overlapping.

I would observe in conclusion that, in my opinion, the legal advisers of the 5th to 12th defendants were fully justified in filing this counterclaim, and it is only because I am strongly impressed by the weight of the arguments put forward by all the other parties urging the inconvenience of seeking to dispose of it in this suit that, in the exercise of my discretionary power, I have come to the conclusion that it should be excluded and made the subject of a separate action.

Order accordingly.

Solicitors for the Plaintiff—*Hogan & Ivens.*

Solicitors for the 1st, 2nd, and 4th Defendants—*Wreford & Thornton.*

Solicitors for the 3rd Defendant—*Logan, Ross & Samuel.*

Solicitors for the 5th to 12th Defendants (inclusive)—*Presgrave & Matthews.*

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

April 20, 1934.

IN RE THE ESTATE OF JAMES MONTAGUE BENT VERMONT DECEASED.

[PENANG ORIGINATING SUMMONS No. 138 of 1933]

Will — construction — residuary bequest of personal estate and effects whatsoever and wheresoever—whether immoveable property included—extent of estate taken by trustees —effect of absolute gift followed by gift over—words of survivorship—whether reference to death of testator or period of distribution.

By his Will a testator appointed two trustees of whom his wife was one. He gave and bequeathed to his wife, *inter alia*, all the residue of his personal estate and effects whatsoever and wheresoever and of what nature and kind or quality soever for her own absolute use and benefit upon trust that she should enjoy certain annuity of not less than £500/- per annum from such properties. He directed the surplus income to be utilised for the payment off of the mortgages then extant and interest thereon. After the death of his wife, he directed that "such properties or monies that may be in hand" might be equally divided between his two named brothers and his nephew, giving the surviving nephews and nieces by his first marriage a prior claim of $1,000 each from such properties or monies. He also provided out of the income derived from his properties a sum for the liberal education of a named beneficiary. At the date of the making of his will the testator's property consisted chiefly of immoveable estate. The testator's personal estate was insufficient to yield an income of £500 per annum. The widow died in 1931. Three of the testator's nephews and nieces by his first marriage had survived him but had predeceased his widow.

Held, on the true construction of the Will, that the testator intended to dispose of all his property and that his real or immoveable estate passed by the Will.

Held further, that the testator's intention was that all his property should (after payment of his funeral and testamentary expenses and legacies and subject to the payment to the widow of the annuity of £500/- and to the allowance for the education of the named beneficiary and to the redemption of mortgages) be enjoyed by his widow during her lifetime and that accordingly she was entitled for life to the whole of the income of his immoveable and moveable properties subject to the payments and allowances mentioned.

Held further, that after the death of the widow a valid trust was created in favour of the testator's named brothers and his nephews and nieces.

Held further, it was clear from the Will read as a whole that the intention was that the whole estate should vest in the present trustees.

Held further, that the gift over on the death of the widow to the surviving nephews and nieces, being preceded by a prior life interest, took effect in favour of those only who survived such prior interest and the word "surviving" was referable to the date of distribution and not the date of testator's death and that accordingly the representatives of the nephews and nieces who had predeceased the widow were not entitled.

James Montague Bent Vermont made his Will dated the 2nd July, 1903, by which after bequathing certain legacies and subject to the payment of his debts funeral expenses he gave to his wife Elizabeth Vermont "all my household goods, monies, furniture, plate, horses, cattle and utensils of household which shall be in about or appertaining to my dwelling houses at the time of my decease, also all the rest residue and remainder of my personal estate and effects whatsoever and wheresoever and of what nature kind or quality soever for her absolute use and benefit upon trust and condition that my wife shall enjoy a certain income from such properties of not less than five hundred pounds sterling (£500/-) per annum over and above her marriage settlement of ten thousand dollars a portion of which is now invested in Richmond Bungalow, Penang Hill. The surplus income of the properties being used to pay off the existing mortgages and interest thereon." (This clause was numbered for convenience as Clause 7).

A later clause numbered for convenience as Clause 11 in the testator's said Will read as follows:—

> "Finally it is my wish and desire that at the demise of my wife that such properties or monies that may be in hand may be equally divided between my brothers Thomas Robert Vermont and Alexandra Septimus Forbes Vermont; the surviving sons and daughters of Philip Jones to have a first claim of one thousand ($1,000.00) each in such residue, they being my much beloved nephews and neices by my first marriage."

The testator died on the 10th May, 1904, possessed of both immoveable and moveable properties. A part of the immovable properties was subject to a mortgage of $5,000. The moveable estate was unincumbered. The income from his personal estate was insufficient to pay an annuity of £500/-.

Elizabeth Vermont who was the sole surviving trustee of the Will of the said testator died on the 21st of December, 1931.

By an order of the Court dated the 24th of October, 1933 and made in Originating Summons No. 112 of 1933, Palgrave Simpson and John Bernard Maxwell Wilson were appointed trustees of the Will of the testator in place of Elizabeth Vermont deceased. The said Order of Court also contained a declaration vesting the testator's property in the trustees.

Philip Jones had five daughters and three sons, namely:—Florence Johanna Harriett Hallifax, Emily Ann Rose Jones, William P. V. Jones and Elivara Emma Marriott Adamson, Seymour Jones, Hilda Isabel Mitchell Adams, Louise Constance Adelaide Hogan and Cecil James Manges Jones. Seymour Jones died between 1890 and 1900, Hilda Isabel Mitchell Adams in 1907, Louise Constance Adelaide Hogan and Cecil James Manges Jones in 1921. Alexandra Septimus Forbes Vermont died in 1933 and Thomas Robert Vermont in 1914.

On the 10th of November, 1904, a special case being Suit No. 423 of 1904 was stated by consent under the provisions of Indian Act XVII of 1852, and the questions submitted for the consideration of the Court in that Suit were substantially the same as some of those now propounded before the Court in the present proceedings. Having regard to the fact that certain interests were not represented in Suit No. 423 of 1904, the trustees were in doubt whether the decision in that suit was binding upon those claiming as on an intestacy through the testator's widow and his next-of-kin.

This was an Originating Summons taken out by the present trustees by which the following questions were raised for determination by the Court:—

1. Whether the order made in Suit No. 423 of 1904 referred to above is binding upon all persons interested in the testator's estate or upon the persons claiming through the widow and the said Alexandra Septimus Forbes Vermont, Thomas Robert Vermont and Morris Anthony Vermont Allen or upon none of such persons.

2. Whether the bequest to the widow in Clause 7 of the Will comprised the testator's landed properties known as Richmond Bungalow and Ayer Rajah House and the testator's debentures in Wellesley (Penang) Estates, Ltd.

3. Whether the said bequest to the widow was absolute or subject to a valid trust in favour of the persons (or some of them) mentioned in Clause 11 of the Will.

4. If the lands and the debentures or either of them are not comprised in the said bequest to the widow whether the proceeds of sale thereof or of either of them are subject to any trusts in favour of the persons (or any of them) set out in Clause 11 of the Will.

5. Whether the balance of the proceeds of sale of the lands and of the debentures and the residue unexpended at the date of the widow's death of the testator's personal estate or any, and, if so, which of them are now vested in the present trustees.

6. If the said Clause 11 of the Will creates a valid trust whether the legal personal representatives or the assigns (if any) of Hilda Isabel Mitchell Adams, Louis Constance Adelaide Hogan, and Cecil James Manges Jones respectively are entitled to receive the sum of $1,000 -.

7. Whether interest is payable upon the sums of $1,000 mentioned in paragraph 6 above at the rate of 4 per cent per annum or at any other and if so what rate, as from the date of the widow's death or as from the date whether residue was reduced to cash and is ready for distribution or from any other and if so, what date or at all.

8. Whether, if Clause 11 does not create any valid trust, the balance of the residue of the testator's personal estate and the balance of the proceeds of the lands and the debentures are upon trust for the legal personal representatives of the widow or for the testator's next-of-kin or for whom else.

Pooley for the applicants, the present trustees, explained the questions for decision and submitted that the terms of the appointment of the executors and trustees vested the whole estate in them even in the absence of an express devise and bequest. He cited *Williams* on Executors, 11th Edn., p. 1105.

Conaghan for A. J. Drake, Administrator of the Estate of Elizabeth Vermont, submitted three propositions namely, (1) Under Clause 7 of the Will all the property moveable and immoveable of the deceased was caught and vested in the widow; (2) No trust attached to corpus of that property; the only trust is as to how income is to be disposed of, (3) Under Clause 11

there is no precatory trust. The persons there mentioned have no interest in the property bequeathed by Clause 7. He referred to *Jarman* on Wills, 7th Edn. pp. 978 & 2145; *Hall* v. *Hall*, (1892) 1 Ch. 361; *Doed. Toefield*, 103 E.R. 999; *Hancock* v. *Watson*, L.R. (1902) A. C. 14 at p. 23; *Theobald* on Wills, 8th Edn., p. 551 para. 6 and 553; *Underhill* on Trusts, 8th Edn. p. 25 para. 2 (6), pp. 26 & 27; *In re Conolly*, (1910) 1 Ch. 219; *In re Jones*, (1898) 1 Ch. 438; *In re Oldfield*, (1904) 1 Ch. 549; *Parnall* v. *Parnall*, 9 Ch. D. 96; *Cowman* v. *Manson*, 90 E.R. 356.

Ross for Emily Jones, appointed also to represent the children of Philip Jones deceased living at the death of the widow Elizabeth Vermont. The administrator of the widow and next of kin are estopped by the judgment in Suit No. 423 of 1904. All the testator's property is included in the gift in Clause 7 but the widow only takes a life interest therein. "Surviving" in Clause 11 refers not to the date of the widow's death but to the date of the testator's death and the gifts vested in those objects who were alive when the testator died. The several gifts of $1,000 each vested in the respective donees as tenants-in-common, not as joint tenants. *Hawkins* on Wills (3rd Edn.) pp. 145 and 277. There is a valid precatory trust under Clause 11 in favour of the nephews and nieces. It is a question of intention and there is no uncertainty here. *Re Adams*, 27 Ch. D. 394; *Re Williams*, (1897) 2 Ch. 12; *Comisky & ors.* v. *Bowning—Hamburg & ors.*, (1905) A.C. 84.

Regester for Florence Matilda Vermont representing the residuary legatees other than those entitled to the gifts of $1,000 each. Widow and next-of-kin are estopped by the judgment in Suit No. 423 of 1904. *Reichel* v. *Macgrath*, (1889) 14 A.C. 665; *Stephenson* v. *Barnett*, (1898) 1 Q.B. 667. The bequest to the widow included all immoveable property. *Re Wass*, 95 L.T. 768; *Cadman* v. *Cadman*, 13 Eq. 470. The bequest to the widow is subject to a valid trust as mentioned in Clause 11. It is a question of intention which is clear here. The estate taken by the trustees also depends on intention, and the properties vest in the trustees not in the widow's representative. The representatives of the nephews and nieces predeceasing the widow cannot take the $1,000: legacies as there is no gift and therefore no vesting until the date of the widow's death. *Cripps* v. *Wolcott*, 56 E.R. 613.

Lynch for the Registrar, Supreme Court, appointed to represent the next-of-kin of deceased. The landed properties of the deceased did not pass under the bequest contained in clause 7 of the Will. See *Jarman* on Wills, 7th Edn. pp. 958, 959. See *Belaney* v. *Belaney*, 2 Eq. 210, 2 Ch. 138, *Jones* v. *Robinson*, 3 C.P.D. 344. *Re Wass*, 95 L.T. 758 distinguished. There was an intestacy as to the landed properties, and they descend to the next of kin of deceased. See *Choo Ang Chee* v. *Neo Chan Neo*, 12 S.S.L.R. 120.

Ross, Regester, Conaghan and Pooley were heard in reply. *Perry* v. *Merritt*, (1874) 18 Eq. 152; and *In re Jones* (1898) 1 Ch. 441; were cited.

Cur. Ad. Vult.

WHITLEY, J.—This Originating Summons was taken out by the Trustees of the Will of James Montague Bent Vermont, deceased, to determine certain questions arising on the construction of the Will.

The Will would appear to have been drawn up by the Testator himself and is dated the 2nd July, 1902. The Testator died on the 10th May, 1904. The Will is not divided into clauses, but for the purposes of convenience and reference, the copies provided for the Court and used by Counsel have had numbers given to what are in effect thirteen distinct clauses.

By the first clause the Testator appoints his friend Lawrence Brown and his wife Elizabeth Vermont Executors and Trustees of the Will. The former took no part in the administration and predeceased the widow who, at the time of her death in December, 1931, was the sole executrix and trustee.

The present Trustees, Messrs. Palgrave Simpson and John Bernard Maxwell Wilson were appointed by an Order of the Court made on 27th October, 1933, in Originating Summons No. 112 of 1933.

The two most material clauses for the purpose of this Summons are clauses 7 and 11, which read as follows:

> 7. I give and bequeath unto my dearly beloved wife all my household goods, monies, furniture, plate, horses, cattle and utensils of household which shall be in about or appertaining to my dwelling houses at the time of my decease, also all the rest residue and remainder of my personal estate and effect whatsoever and wheresoever and of what nature kind or quality soever for her own absolute use and benefit Upon Trust and condition that my wife shall enjoy a certain income from such properties of not less than five hundred pounds sterling (£500) per annum over and above her marriage settlement of ten thousand dollars a portion of which is now invested in Richmond Bungalow Penang Hill. The surplus income of the properties being used to pay off the existing mortgages and interest thereon.
>
> 11. Finally it is my wish and desire that at the demise of my wife that such properties or monies that may be in hand

> may be equally divided between my brothers Thomas Robert Vermont and Alexander Septimus Forbes Vermont my nephew Morris Anthony Vermont; the surviving sons and daughters of Phillip Jones to have a first claim of one thousand ($1,000) each in such residue, they being my such beloved nephews and nieces by my first marriage,

I shall have occasion to refer incidentally to other clauses, but I do not think it is necessary to set them out in full.

There is no devise to the Trustees as such.

At the hearing eight questions were submitted by the Trustees for the opinion of the Court.

The first question raises a point of *res judicata* which it will be more convenient to deal with later. All that it is necessary to say at this stage is that in 1904 a Special Case (Suit No. 423 of 1904) was stated under the provisions of an Indian Act XVII of 1852 asking for construction of the Will and an Order was duly made which covers the second and third questions raised by the present Summons.

For reasons set out fully in the affidavit of Mr. Palgrave Simpson dated 9th January, 1934, the Trustees are in doubt whether that decision is binding upon all the next-of-kin and accordingly representation orders were obtained as the result of which all parties who may be interested are now properly before the Court.

Question 2 reads:—

> 2. Whether the bequest to the widow in the seventh clause of the Testator's said Will comprised the Testator's landed properties known as Richmond Bungalow and Ayer Rajah House (hereinafter referred to as 'the lands') and the Testator's debentures in Wellesley (Penang) Estates, Limited."

If, as in this clause, a testator disposes of his "personal estate and property" or "personal estate and effects" the word 'personal' will, as a general rule, override the whole. *Buchanan* v. *Harrison*, 31 L.J. Ch. 74, but the testator may shew by the context that he means real estate to pass by a gift of his "personal estate and effects" *Re Wass*, 95 L.T. 758 and *Doe* v. *Tofield*, 103 E.R. 999.

I think that in this clause the context clearly shews that such was the intention of the Testator. The last sentence of the clause provides for paying off mortgagees with the surplus income of "the properties." The word "properties" there must include real estate, as the only "existing mortgages" were mortgages of real estate. "The properties" must refer back to "such properties" in the preceding sentence and "such properties" can only mean the "personal estate and effects" referred to earlier in the clause which accordingly must have been intended to include real estate as well as personal.

Again, the Testator directs that his wife should enjoy a certain income from "such properties" of not less than £500 sterling per annum. At the time when he made his Will the bulk of his property consisted of real estate and his personal property was never sufficient to produce an income of £500.

The following passages in the judgments of the Court of Appeal in *Hall* v. *Hall*, (1892) 1 Ch. 361, in which a similar question was under consideration, seem entirely apposite.

Per Lindley, L.J.:—

> "The will is badly drawn—it does not in terms apply to real estate in such a way as a conveyancer would refer to it. It is obvious it was not drawn by a lawyer."

Per Lopez, L.J.:—

> "I do not rely much on authorities when we are called upon to interpret wills like that we have here. I look at the will and at the surrounding circumstances and I can come to no other conclusion than that the Testator intended to deal with the whole of his property."

I can come to no other conclusion in construing clause 7 and I accordingly answer this Question in the affirmative.

Question 3 reads:—

> Whether the said bequest to the widow was absolute or subject to a valid trust in favour of the persons (or some of them) mentioned in the eleventh clause of the Will.

Mr. Conaghan, on behalf of the administrator of the widow's estate, argued that the effect of clause 7 is to make an absolute gift of the corpus to the widow whilst creating a trust in respect of the income. I do not think that can be so, for there would then be nothing to prevent the widow from disposing of the corpus, e.g., by giving it to charitable institutions, and thus destroying the income. He bases his argument primarily upon the use in clause 7 of the words "for her own absolute use and benefit" and relies upon the long line of cases which lay down that, if a gift is made in terms to a person absolutely that can only be reduced to a more limited interest by clear words cutting down the first estate. *Hancock* v. *Watson*, L.R. (1902) A.C. 14, *In re Conolly*, (1910) 1 Ch. 219.

But, although the words are absolute in the first instance, you may find subsequently occurring words sufficiently strong to cut down the first apparent absolute interest to a life interest. *In re Jones*, (1898) 1 Ch. 438.

I entertain no doubt that the words subsequently occurring in this Will are sufficiently strong to do that. Immediately after the words

"for her own absolute use and benefit" follow the words "upon trust and condition that my wife shall enjoy a certain income from such properties of not less than £500." These words would be meaningless if the Testator had intended an absolute gift to his wife. He goes on to direct that any surplus income remaining after paying this £500 should be used to pay off mortgages and interest, which provision, again, is quite inconsistent with an absolute gift.

Finally, by clause 11 he expresses his "wish and desire" that, when his widow died the "properties or monies in hand" should be divided among certain persons.

I am satisfied, reading the Will as a whole, that what the Testator contemplated and intended was that all his property should be vested in the two Trustees named—his wife and Lawrence Brown—; that after payment of the debts funeral expenses and legacies directed by the Will, the widow should during her lifetime and subject to two qualifications receive the whole of the rents and profits to be derived from the moveable and immoveable property of the Testator. The two qualifications were that, after the Trustees had paid her the annual sum of £500, they should out of the income allow a sum for the liberal education of Claude Logan (clause 8) and then pay off principal and interest on mortgages. The income was accordingly to be applied as follows:—

> First in payment to the widow of a clear annual sum of £500.
>
> Secondly in providing for the education of Claude Logan, and
>
> Thirdly in payment off of principal and interest secured at the date of his death by mortgage of any part of the Testator's moveable and immoveable property.
>
> After payment of such principal monies and interest the whole of the income was (subject to provision for the education of Claude Logan) payable to the widow annually during her life and for her own absolute use and benefit.

This view is the same as that taken by the Court which heard the Special Case in 1904 and accordingly there is no need for me to give any ruling on the plea of *res judicata*.

Having thus made provision for his widow during her lifetime the Testator, in clause 11 gives directions as to who shall take his property after her death. He uses the words "it is my wish and desire," and I am asked to decide whether those words are sufficient to constitute a precatory trust. The cases which were cited on this subject are to some extent conflicting, but the principle which they establish is clear and is summed up in the following words of Romer, J. in *Re Williams, Williams* v. *Williams*, 1897, 2 Ch. at page 14:—

> "The rule you have to observe is simply this: In considering whether a precatory trust is attached to any legacy, the court will be guided by the intention of the testator apparent in the will, and not by any particular words in which the wishes of the testator are expressed."

It has to be borne in mind that the question is not one of law but merely one of the true interpretation of the document which contains the precatory words. If one applies the dictum of Lord Lindley that—

> "when I see an intention clearly expressed in a will and find no rule of law opposed to giving effect to it, I disregard previous cases,"

I do not think this clause of the Will presents any real difficulty and I have no hesitation in holding that it creates a valid trust in favour of the persons named. No other clause in the Will purports to provide for what is to happen after the widow's death so that unless this clause creates a trust there is an intestacy as to the whole of the property when she dies and the Court always leans against an intestacy. The intention of the Testator seems to me very clear. So long as his widow lived he wished her to enjoy the whole of the income from the whole of his property (subject to the qualifications already referred to). She had the first claim, and until she died his relatives were to take nothing. But when she died he wished them to benefit, and accordingly provided that everything should then be divided between his brothers nephews and nieces of whom he was clearly very fond. This was a very natural way to dispose of his property, and I am satisfied that his intention is sufficiently clearly expressed. In fact, I do not think the Will is capable of any other interpretation.

Question 4 does not arise in view of my finding on Question 3.

Question 5 reads—

> Whether the balance of the proceeds of sale of the lands and of the said debentures and the residue unexpended at the date of the widow's death of the Testator's personal estate or any and, if so, which of them are now vested in Palgrave Simpson and John Bernard Maxwell Wilson as the present Trustees of the Will or in whom else the same are now vested.

Although there is in the Will no devise to the Trustees as such it is clear that the intention was that the Estate should vest in the Trustees. This appears from clause 4, which directs yearly payment of certain insurance premiums; clause 8 which directs the Trustees to provide for the education of the adopted son; and clauses 9 and

10 which give the Trustees powers of sale and reinvestment.

I hold that the whole estate is now vested in Palgrave Simpson and John Bernard Maxwell Wilson, the present Trustees.

Question 6 reads:—

> If the said eleventh clause creates a valid trust whether the legal personal representatives or the assigns (if any) of Hilda Isabal Mitchell Adams, Louise Constance Adelaide Hogan and Cecil James Manges Jones respectively are entitled to receive the sum of $1,000.

From paragraphs 6 and 7 of the affidavit of J. B. M. Wilson dated 6th December, 1933, it appears that Phillip Jones had five daughters and three sons, namely:—Florence Johanna Harriet Hallifax, Emily Ann Rose Jones, William P. V. Jones and Elvira Emma Marriot Adamson, Seymour Jones, Hilda Isabel Mitchell Adams, Louise Constance Adelaide Hogan and Cecil James Manges Jones and that the first four named are still alive. Seymour Jones died before 1900. The Testator made his Will in 1902 and died in 1904. Hilda Isabel Mitchell Adams, Louise Constance Adelaide Hogan and Cecil James Manges Jones died between 1904 and 1921. The Testator's widow died in 1931. The question thus arises whether the word "surviving" in clause 11 means, surviving at the date of the Testator's death or, surviving at the date of his widow's death.

In the former case the legal personal representatives of the three children of Phillip Jones who died between 1904 and 1921 would be entitled to $1,000 each out of the residue; in the latter case, they would not.

Mr. Ross, on behalf of these representatives, argued that these were gifts to a class and that the gifts vested in each of the children as tenants-in-common at the death of the Testator. In this contention he is supported to some extent by the series of earlier authorities which seem to have established that a gift to several objects as tenants-in-common and the survivors of them vested the subject of the gift absolutely in the objects living at the death of the Testator, the words of survivorship being referable to that period. But this rule of construction has been departed from in subsequent cases and, in *Cripps* v. *Wolcott*, 20 Rev. Rep. 268, Sir J. Leach, V.C., laid down an opposite doctrine. It is now clearly settled that the rule which reads a gift to survivors simply as applying to objects living at the death of the testator is confined to those cases in which there is no other period to which survivorship can be referred; and that where such gift is preceded by a life or other prior interest it takes effect in favour of those who survive the period of distribution and of those only.

(See *Jarman* on Wills, 7th edn. vol. 3, p. 2065). The rule in *Cripps* v. *Wolcott* has been followed repeatedly and is one which the Court never seeks to evade by slight distinctions. In the words of Farwell, J. in *Re Poultney*, (1912) 2 Ch. 541 "the rule in *Cripps* v. *Wolcott* is too well settled to be whittled away now." The rule will only yield to a context clearly indicating a contrary intention and there is no such context in this Will. Indeed, the first part of clause 11 contains the words "at the demise of my wife" and it is reasonable to suppose that the intention was that the word "surviving" in the second part of the clause should refer back to these words.

I hold that the legal personal representatives of the three children named in Question 6 are not entitled.

Question 7 reads:—

> Whether interest is payable upon the sums of $1,000—payable to the sons and daughters of Philip Jones at the rate of four per cent per annum or at any other and if so what rate, as from the date of the widow's death or as from the date when the residue has been reduced to cash and is ready for distribution or from any other and if so what date or at all.

It is agreed by all parties concerned that interest is payable upon these sums at the rate of four per cent per annum as from the date of the widow's death. I hold accordingly.

Question 8 does not arise in view of my ruling on the construction of clause 11.

Order accordingly.

Solicitors for the Applicants—*Presgrave & Matthews.*

Solicitors for A. J. Drake, Administrator of Estate of Elizabeth Vermount, deceased—*Wreford & Thornton.*

Solicitors for Emily Jones—*Logan, Ross & Samuel.*

Solicitor for Florence Matilda Vermount—*Hogan & Ivens.*

[ORIGINAL CIVIL JURISDICTION]

HYNDMAN-JONES, C.J.

December 30, 1911.

T. S. AROONASALAM CHITTY.....Plaintiff

v.

SEAH ENG KOON & ANOR.....Defendants.

[SINGAPORE SUIT No. 221 of 1911]

Contract—Assignability—Promissory Note—Assignment for value.

A Promissory Note was made in favour of one S. J. W. "personally". The said Note having been assigned for value to a Chitty who sued the maker's personal representatives thereon.

Held, the debt was not assignable.